

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Cont. Cas.(Crl.).No. 2 of 2006(S)

AGAINST THE ORDER IN IA. 486 /2005 IN
OS.25/2005 of MUNSIFF-MAGISTRATE COURT,PERINTHALMANNA
.....

SUO MOTU.

ADV. SRI.P.N.RAVINDRAN (AMICUS CURIAE)

RESPONDENT: CONTEMNER

SRI. ELAMPULASSERY ISMAYIL,
MUNNOOR, PUZHUR P.O., MAVOOR (VIA),
KOZHIKODE.

BY ADV. SRI.BABU KARUKAPADATH
SRI.K.A.NOUSHAD

THIS CONTEMPT OF CASE (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 06/02/2007, THE COURT ON 19/02/2007 DELIVERD THE
FOLLOWING:

K.S. RADHAKRISHNAN, Ag. C.J. & ANTONY DOMINIC, J.

Contempt Case (Criminal) No. 2 of 2006

Dated: 19th February 2007.

JUDGMENT

Radhakrishnan, Ag. C.J.

This contempt of court proceedings have been initiated by the Munsiff-Magistrate, Perinthalmanna on a complaint filed on 17.06.2005 by an advocate commissioner appointed in I.A. 486 of 2005 in O.S. No 25 of 2005 alleging that on 17.05.2005 the contemner had entered his office and threatened him with dire consequences if an adverse report is given against the defendant in the suit, the father-in-law of the contemner. Further it was alleged that the contemner had caught hold of the collar of the shirt of the Advocate Commissioner and had caused extensive damage to the office of Advocate Commissioner. It was alleged that the contemner had torn off the commission warrant and the draft report and other files of the Commissioner. The complaint was forwarded to the Sub Inspector of Police, Perintalmanna under Section 156 (3) of the Code of Criminal Procedure and he was directed to register a crime which was investigated and a final report for offences punishable under Sections 341,

353, 452, 427 and 506(ii) I.P.C was filed. Later C.C. No 694 of 2005 for offences punishable under Sections 341, 353, 452, 427 and 506 (ii) I.P.C was registered.

2. Learned Munsiff-Magistrate took the view that the conduct of the contemner was something that would prejudice or tend to prejudice or interfere with the due course of the judicial proceedings. In an enquiry conducted by him the learned Munsiff-Magistrate had examined four witnesses and a prima facie case was found against the alleged contemner and therefore made a reference to this court under Section 15 of the Act read with Rule 8 of the Rules for proceeding against the contemner in accordance with law. This court issued notice to the contemner who had entered appearance and filed a reply statement denying the allegations and had also referred to the complaint filed by him stating that the Advocate Commissioner had on 17.06.2005 demanded illegal gratification.

3. Counsel appearing for the contemner Sri Babu Karukapadath submitted that the reference made by the learned Munsiff-Magistrate is not legally sustainable since proceedings were initiated on a reference under Section 15 (2) of the Act read with Rule 8 of the Rules without notice to the contemner and alternatively contended that if fresh proceedings are to be initiated it will be hit by Section 20 of the Contempt of Courts Act. When

the matter came up for hearing, this court appointed advocate Sri P.N. Ravindran as Amicus Curiae to assist the court. We heard learned counsel for the alleged contemner and also Shri P.N. Ravindran.

4. A Division Bench of this court in Bar Council of Kerala v. Saju (2001 (1) KLT 341) examined the question as to whether it is necessary for the Subordinate Court to issue notice to the alleged contemner before making a reference to this court under Section 15 of the Contempt of Court Act. This court in that case held as follows:

“Rule 8 of the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971 provides for the procedure to be followed before a reference is made by the Subordinate Court under Section 15 of the Contempt of the Contempt of Courts Act. Rule 8 mandates that before making a reference under Section 15 of the Act, the subordinate Court may hold such inquiry as it deems fit into the circumstances leading to the reference. It also provides that such reference shall contain, (a) the name and address of the person alleged to have committed the contempt, (b) the facts constituting the alleged contempt, (c) the circumstances leading to the reference, (d) all the relevant records, and (e) draft charges.

The above would make it clear that before making a reference, the Subordinate Court itself has to conduct an enquiry and only after it is satisfied that there is a case made out for reference to this court, it can make the reference. While making the reference, apart from the other documents and details referred in R. 8 (ii), even the draft charges are to be framed and sent along with the reference by the Subordinate Court. For conducting an enquiry, necessarily, the Subordinate Court has to issue notice to the alleged condemner. It is open to the Subordinate Court to take the statements of the complainants and the alleged condemners in the course of the

enquiry contemplated under R. 8 (i).”

The above decision was referred to by a learned single judge of this court in Jomon Puthenpurackal v. Judicial First Class Magistrate -III (2004 (1) KLT 720). However, the learned judge took the view that Rule 8 of the Contempt of Courts (High Court of Kerala) Rules says that before making a reference under section 15 of the Act, the Subordinate Court may hold such inquiry as it deems fit into the circumstances leading to the reference and that the issue has to be decided by the Subordinate Court and that itself would indicate that in all cases notice need not be issued to the condemner before taking a decision as to what has to be done with the petition filed for initiating contempt.

5. Indisputably no notice was issued to the alleged contemner at any stage before reference was made by the learned Munsiff-Magistrate under Section 15 of the Act read with Rule 8 of the Rules and therefore, the question to be decided is whether, before making a reference, notice has to be issued to the contemner or not. We are in full agreement with the reasoning of the Division Bench in Saju's case, supra that while conducting an enquiry, necessarily the Subordinate Court has to issue notice to the alleged contemner. It is open to the Subordinate Court to take the

statements of the complainants and the alleged contemner in the course of the enquiry. Rule 8 makes it clear that before making a reference under Section 15 of the Act, the Subordinate Court may hold such inquiry as it deems fit into the circumstances leading to the reference. For conducting the enquiry, necessarily the Subordinate Court has to issue notice and non issue of notice to the contemner would vitiate the reference made by the learned Munsiff-Magistrate. We therefore find ourselves unable to accept the reasoning of the learned single judge in Jomon Puthenpurackal's case.

6. Counsel appearing for the contemner raised a contention that the incident leading to the contempt occurred on 17.05.2005 and as the proceedings and the order of reference is bad in law and if an enquiry is to be held with notice to the alleged contemner the same would be hit by Section 20 of the Act, which says that no court shall initiate any proceedings for contempt either on its own motion or otherwise after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. The scope of Section 20 of the Contempt of Courts Act, 1971 came up for consideration before the apex court in Pallav Sheth v. Custodian (2001 (7) SCC 549). After referring to the earlier decision in Om Prakash Jaiswal v. D.K. Mittal (2000 (3) SCC 171), the apex court held as follows:

“The decision in Om Prakash Jaiswal case to the effect that initiation of proceedings under Section 20 can only be said to have occurred when the court formed the prima facie opinion that contempt has been committed and issued notice to the contemner to show cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted and is not only going to cause hardship but would perpetuate injustice. A provision like Section has to be interpreted having regard to the realities of the situation. If the interpretation of Section 20 put in Om Prakash Jaiswal case is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court or the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate General for permission to initiate contempt proceedings is regarded as initiation by the court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, de hors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the courts to punish for contempt which is recognised by the Constitution.”

The above dictum laid down by the apex court would show that the filing of the application before subordinate court or the High Court, making a reference by a subordinate court on its own motion or the filing an application before an Advocate General for permission to initiate contempt of court proceedings has to be regarded as initiation by the court, for the purpose of Section 20 of the Contempt of Courts Act. So far as the present

case is concerned, the incident occurred on 17.05.2005 and the Commissioner filed a private complaint on 17.06.2005 before the Munsiff-Magistrate, and hence a valid initiation for the purpose of the Section 20 of the Act. Hence the proceedings are not hit by Section 20 of the Act. We have however found that no notice was issued to the contemner before making the reference and hence the matter has to go back to the Munsiff-Magistrate for giving notice to the contemner and decide the question of reference afresh under Section 15 of the Contempt of Court Act read with Rule 8 of the Rules. The contempt case is disposed of as above.

Sd/-
K.S. RADHAKRISHNAN
Ag. Chief Justice

Sd/-
ANTONY DOMINIC
Judge

19/02/2007
en/

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